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CLEANING DIRTY HANDS?

Some Thoughts on Private Companies, Migration and CSR in the European Union

TENDAYI BLOOM*

Abstract

Migration is so far little discussed in the CSR literature and CSR is little discussed in the migration literature. Where these discourses do come together, it is most commonly regarding how private companies affect migration patterns, the need for employers to adhere to State immigration policies, and the possible involvement of the private sector in activities relating to trafficking. However, European countries frequently use the services of private companies to carry out a range of migration-related activities. This paper looks at the use of private companies to support a State's pre-entry measures (carrier sanctions), internal measures (detention) and ejection (deportation). It presents some of the ways in which this delegation may be considered problematic and suggests a possible direction for a CSR case for corporations sometimes not to carry out States' wishes in this sector. In particular, it suggests that there is scope for considering a business case for CSR in this sector, an ethical case and a legal case. It offers a brief discussion of how access to passenger transportation could in some circumstances be seen as a vital need. This paper uses the discussion of the involvement of the passenger transport industry in migration control to draw attention to two wider concerns. First, how can European CSR respond in situations where the European States themselves may be violating international norms? Second, is there scope for developing an understanding of CSR in the wider migration control sector?

Keywords: Carrier sanctions; Corporate social responsibility; Deportation; Human rights; Migration; Security industry; Transport industry

* Global Justice Program, Macmillan Center, Yale University, tendayi.bloom@yale.edu.

1. INTRODUCTION¹

The right to leave a country² and not to be sent to a place where one's life or freedom would be threatened ('*refoulement*')³ are well-established international principles. Yet it has been suggested that when European States mediate migration control through private companies this may obscure failure to fulfil these principles and lead to the development of new forms of hidden coercion.⁴ This paper suggests that being able to migrate could in some circumstances be regarded as a good that is vital – necessary for life and crucial for key human rights. To provide a broad picture of the situation, it will present examples from three stages of privatised migration control: pre-entry (carrier sanctions), internal (detention) and ejection (deportation). These also provide a means to examine a range of CSR considerations that arise. As such, this paper draws parallels within the CSR literature relating to utilities (water and electricity) and the obligation not to interrupt the supply of a vital good, even when a State has so-requested. This paper's discussion of private sector involvement in migration control also adds to wider questions regarding the role of European CSR in contexts where European States may seek private sector complicity in potentially rights-violating activities, and broader conflicts that arise when CSR advocates that a corporation act in a way other than that instructed by a State. This paper is not offering a systematic study of CSR or of private sector involvement in migration control. It acknowledges that many have criticised CSR as a tool for human rights promotion⁵ and that this might not, ultimately, be a workable solution in the migration sector either. It also acknowledges that migration raises particular questions relating to sovereignty, and that this intersects in specific ways with the wider concern about the potential for conflict in CSR regimes⁶

¹ The author would like to thank Giselle Corradi, Carmen Márquez-Carrasco, Elisa Medici, Matti Ylönen and the HR&ILD reviewers for their helpful comments on the paper. When the author started work on the paper she was a Research Fellow at the United Nations University Institute on Globalization, Culture and Mobility (UNU-GCM). She moved to her current position during the writing process.

² 'Everyone has the right to leave any country, including his own', Art 13(2) Universal Declaration of Human Rights; also see Art 12(2) ICCPR and the more recent instruments. For a European perspective, see E. Guild, *The Right to Leave a Country*, Commissioner for Human Rights Issue Paper (Strasbourg: Council of Europe, 2013).

³ Art 33, 1951 Convention Relating to the Status of Refugees: '...to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'; Art 3, 1984 Convention Against Torture: '...to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture'.

⁴ T. Bloom and V. Risse, *Examining Hidden Coercion at State Borders: Why Carrier Sanctions Cannot Be Justified*, 7(2) *Ethics & Global Politics* 65–82 (2014).

⁵ For a helpful discussion, see: D. Rabet, *Human Rights and Globalization. The Myth of Corporate Social Responsibility?*, 1(2) *Journal of Alternative Perspectives in the Social Sciences* 463–475 (2009).

⁶ See, for example, F. Robins, *The Future of Corporate Social Responsibility*, 4 *Asian Business and Management* 113–114 (2005).

and with fear of the power of international corporations to impinge on sovereignty.⁷ What this paper does do is present a case for further consideration of the potential role of CSR or at least CSR *discourse* in this sector.

2. SETTING THE SCENE AND DEFINING TERMS

A common critique of Corporate Social Responsibility is that it allows companies with unethical business practices to launder their image through tokenistic philanthropy or 'greenwashing' activities that emphasise sustainability.⁸ The cases discussed in this paper indicate there may be situations where States might launder activities (metaphorically washing 'dirty hands') by mediation through private companies and suggests that CSR could perhaps provide a tool to address this. The modern conception of 'the problem of dirty hands' was elaborated by Michael Walzer,⁹ though the question goes further back.¹⁰ Walzer argues that it is impossible for anyone to 'govern innocently', that in governing a person may even surrender his or her *right* to keep his or her hands clean. Border enforcement activities could seem to represent situations of just such unavoidably dirty hands. However, even if a leader's dirty hands might sometimes be forgivable, as Walzer allows, this would not mean *anything* goes. Indeed, though a closed borders communitarian theorist, Walzer also allows for special obligations to grant asylum.¹¹ As will be presented in this paper, this limit also fits within CSR discourse on the supply of basic goods and services needed for life.

This paper builds upon what I will call the Lahav Migration Trilemma.¹² Lahav's Trilemma presents a liberal State's migration policy as being pulled in three different

⁷ R. Vernon, *Sovereignty at bay: the multinational spread of U.S. enterprises*. Basic Books, New York, 1971.

⁸ This is a global critique. E.g. see R. Hamann and R. Kapelus. *Corporate Social Responsibility in Mining in Southern Africa: Fair accountability or just greenwash?*. *Development* 47(3) (2004). 85–92; F. Benoît-Moreau, F. Larceneux and B. Parguel. *La communication sociétale: entre opportunités et risques d'opportunisme*. *Décisions Marketing*. 59 (2010) 75–78. See also interesting initiatives, such as this one from the University of Oregon: www.greenwashingindex.com.

⁹ M. Walzer, *Political Action: The Problem of Dirty Hands*, 2(2) *Philosophy and Public Affairs* 160–180 (1973).

¹⁰ The title of Walzer's paper references Sartre's play from the 1940s, entitled 'Les Mains Salées'. In the paper, Walzer refers to Machiavelli's essay. For a useful discussion of the wider literature on 'dirty hands', see J. Parrish. *Paradoxes of Political Ethics: From Dirty Hands to the Invisible Hand*. Cambridge University Press, 2007.

¹¹ M. Walzer, *Spheres of Justice* (Basic Books, 1983). For him, though, this kicks in when a person arrives at the State's border. He does not discuss activities keeping persons from arriving.

¹² One version is found in G. Lahav and M Courtemanche. *The Ideological Effects of Framing Threat on Immigration and Civil Liberties*. *Political Behaviour* 34 (3) 477–505 (2012) at 482; another is presented in G. Lahav. *From Migration Control to Disciplining Mobility: New Actors, New Challenges*, part of: 'The Lampedusa Dilemma: Global Flows and Closed Borders. What Should Europe do?', EUI Florence, 17–18 November 2014.

directions. There are strong and competing interests to promote security, rights and markets, but in the way things are currently constructed, it is difficult to take all three into account simultaneously. This paper shows how CSR could offer a way in which to bring together the horns of the trilemma, or at least to consider their respective strengths and relationships in new ways. Crucial to the difficulties Lahav presents is the undeniable role of the private sector in contemporary migration policy infrastructures. CSR discourse is one vehicle for acknowledging the private sector's important role in migration control and its potential role in improving current frameworks towards better protection for migrants.

The meaning of CSR is notoriously difficult to pin down – one 2006 study¹³ found thirty-seven definitions.¹⁴ For convenience, this paper assumes the rather broad definition given by the European Commission: '... corporate social responsibility (CSR) refers to companies taking responsibility for their impact on society'¹⁵ and understands it as a 'field of scholarship',¹⁶ rather than a particular concept or theory, in which this responsibility can be usefully analysed in four dimensions:

- (1) Economic (be profitable);
- (2) Legal (obey the law, play by the rules of the game);
- (3) Ethical (be ethical, do what is right, just and fair, avoid harm); and
- (4) Philanthropic (be a good corporate citizen, contribute resources to the community).¹⁷

Part of the work of this paper is to look towards a way to understand the third of these. European discourse relating to CSR has largely examined the extent to which European countries are promoting CSR among European businesses,¹⁸ measuring their successes and trying to explain any failure.¹⁹ Examination of CSR conflicting

¹³ A. Dahlsrud, How Corporate Social Responsibility is Defined: an Analysis of 37 Definitions, *Corporate Social Responsibility & Environmental Management* (2006), cited in A. Carroll and K. Shabana, The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practice, *International Journal of Management Reviews* (2010), 89.

¹⁴ See also Archie Carroll's analysis of the development and proliferation of understandings of CSR and its related terminology: A Carroll, *Corporate Social Responsibility: Evolution of a Definitional Construct*, 38(3) *Business and Society* 268–295 (1999).

¹⁵ [Ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm](http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm) (Accessed 2nd May 2015).

¹⁶ A. Crane, D. Matten, A. McMilliams, J. Moon and D. Siegel, Introduction, in A. Crane et al (eds) *The Oxford Handbook of CSR* (Oxford: Oxford University Press, 2008).

¹⁷ A. Carroll, The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organisational Stakeholders, *Business Horizons* 39–48 (1991), at 42.

¹⁸ R. Mulleral, Corporate Social Responsibility: A European Perspective, 13(6) *The Jean Monnet/Robert Schuman Paper Series*, at 13; R. Welford, Corporate Social Responsibility in Europe, North America and Asia: 2004 Survey Results, 17 *Journal of Corporate Citizenship* 33–52 (2005), at 17.

¹⁹ *Ibid.*

with State norms has focussed on European companies doing business in non-European States which engage in rights violation. There is little sustained analysis of what the CSR is if a European State is not fulfilling rights obligations.²⁰ A paradox raised in this paper is that 'although in many cases the states are still the major threat to human rights, they are the ones largely considered responsible for regulating the operation of the TNCs [transnational corporations]'²¹ – and that this may apply also in the European context. Indeed, it asks whether CSR may provide an alternative in this sector.

UN codification of CSR frameworks arguably began with the 1946 London Agreement, which explicitly obliged both individuals and governments to comply with international law.²² Four processes have been particularly important in the context of this discussion: the International Code of Conduct for Private Security Providers ('the Code'), the UN Global Compact, the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights ('the Norms'), and the Guiding Principles on Business and Human Rights ('the Guiding Principles'). The Norms are listed because, even though they were eventually rejected by the Commission on Human Rights in 2004, for a while they looked set to be 'the first non-voluntary initiative accepted at the international level'.²³ Indeed, what is interesting about the Norms is that the drafters did not set out to create something new, but to bring together existing international obligations applying 'either directly or indirectly to business entities' (though this involuntary aspect of the treaty is also what may make some argue that it does not count as CSR).²⁴ Another interesting aspect of the Norms, and which indicates the relevance of the overlap presented in this paper, is David Weissbrodt, who was so instrumental in their development and went on to write extensively on the rights of migrants and non-citizens.²⁵

²⁰ For a useful survey of what is known as 'Political CSR', see J.G. Fryers and S. Stephens. Political Corporate Social Responsibility: Reviewing Theories and Setting New Agendas, 17 *International Journal of Management Review* 483–509 (2015).

²¹ N. Irina, Corporate Social Responsibility and Human Rights in the Context of the European Union, Working Paper of the Canadian Centre for German and European Studies, York University, Toronto (2008), at 4.

²² D. Weissbrodt, Non-State Entities and Human Rights within the Context of the Nation-State in the 21st Century, 175–195 in M. Castermans-Holleman, M. Fried van Hoof and J. Smith (eds) *The Role of the Nation-State in the 21st Century* (The Hague: Kluwer Law International, 1998), at 178.

²³ D. Weissbrodt and M. Kruger, Human Rights Responsibilities of Business as Non-State Actors, 315–350 in P. Alston, *Non-State Actors and Human Rights* (Oxford: Oxford University Press, 2005), at 318.

²⁴ *Ibid.*, at 328.

²⁵ *Ibid.*; D. Weissbrodt, *The Human Rights of Non-Citizens* (Oxford: Oxford University Press, 2009); D. Weissbrodt and M. Divine. *Unequal Access to Human Rights: The Categories of Non-citizenship* 19(8) *Citizenship Studies* 870–891 (2015).

Critics of these processes have also been highlighting this paradox – and indeed, raising it with reference to the immigration sector. For example, the authors of a 2007 article critiquing the way CSR processes were being developed already referenced the immigration industry in order to draw attention to what they refer to as:

the far more controversial issue that all states can fail in terms of corporate human rights regulations, and that developed states can and have been party to corporate human rights abuses.²⁶

The example that the authors of this comment select to illustrate the point is that of human rights abuses in Australian immigration detention centres then run by Global Solutions Ltd.²⁷ Similar abuses have taken place in both private- and State-run European detention centres. The connections between the passenger transport industry and migration are also clear. It is via coaches, trains, airplanes and boats that migrants are able to move, either voluntarily or when forced to do so. The decisions of persons in the transportation industry, therefore, affect those who can reach State borders in the first place. States seek to control such decisions, for example through banning routes or imposing restrictions and sanctions. They also contract passenger transporters in order to remove people from their territories. The three facets of the immigration industry discussed here are, then, different but related. For example, in the cases of both deportation and detention, a State contracts a private actor to do something, while carrier sanctions coerce a private actor not to do something. All three may play a role in interrupting asylum-seeking and all three raise questions for the potential of CSR in this sector.

The problem of dirty hands in migration control has become increasingly marked in the European context. Alongside the development of an internal zone of free movement of goods, services and people has been the creation of an external border (physical and societal) that is increasingly securely defended. This is part of a phenomenon that has come to be known as ‘fortress Europe’,²⁸ whether because of the external border controls, the border protections, the internal controls, or the other measures that protect Europe and its Member States’ territory and institutions from

²⁶ D. Kinley, J. Nolan and N. Zerial, *The Politics of Corporate Social Responsibility: Reflections on the United Nations Human Rights Norms for Corporations*, *Company & Securities Law Journal* 30–42 (2007), at 39.

²⁷ Interestingly, this was also the period when Global Solutions Ltd was being acquired by G4S (e.g. see www.g4s.com/en/Media%20Centre/News/2008/05/12/G4S%20Completes%20Acquisition%20of%20Global%20Solutions%20Limited%20GSL/). Given the focus in this paper on Europe, it is worth noting that GSL was also working in Europe at the time of this quotation. For example, see discussion of UK use of the company in C. Bacon, *The Evolution of Immigration Detention in the UK: The Involvement of Private Prison Companies*, RSC Working Paper No. 27, September 2005.

²⁸ The origins of this phrase are confusing, but in its current instantiation, the notion of a ‘Fortress Europe’ has come into use particularly since the 1990s to refer to the series of measures implemented to protect Europe’s external border in the two main dimensions of access to territory and access to welfare systems.

outsiders. These measures have been widely criticised. For example, after an extensive analysis of the European Union's borders, François Crépeau, Special Rapporteur on the Human Rights of Migrants (SRHRM) for the Office of the High Commissioner for Human Rights at the UN (OHCHR) warned in 2013 that '[o]f the utmost concern are the deaths of irregular migrants attempting to cross into the European Union'.²⁹ This conclusion has been reached by many others,³⁰ with one report finding that around 75 per cent of the world's migrant deaths from January to September 2014 occurred in the Mediterranean as people tried to cross into Europe.³¹ The role of the private sector in European migration control was often not mentioned in such reports. The role of private actors in *facilitating* migration is more often discussed, in particular, with criticism of those private actors employed by migrants to help facilitate migration: the people smugglers and traffickers. An important exception to this is the 2014 IOM report compiled by Tara Brian and Frank Laczko, in which it is argued that the introduction of sanctions on private carriers has made migration more difficult and more dangerous,³² as well as touching upon how this may affect the possible role of private actors in saving people in distress at sea.³³

3. PRIVATISING MIGRATION CONTROL IN EUROPE AND SECURITY

Migration has so far been little discussed within the CSR literature and CSR is little discussed within the migration literature. Where these discourses do come together, it is almost exclusively with regard to how private companies affect migration patterns, the need to adhere to State immigration policies, and the possible involvement of the private sector in activities relating to trafficking. However, beyond the CSR literature critics have been raising concerns about the role of private companies in the development of Europe's border policies for decades. The global literature on the role of the private sector in migration arguably started with Robert Harney's exploration of what he called 'the Commerce of Migration'.³⁴ He examined how private actors benefitted from facilitating various aspects of the Italian emigration to North America

²⁹ Report of the Special Rapporteur on the human rights of migrants, François Crépeau, Regional study: management of the external borders of the European Union and its impact on the human rights of migrants (2013), A/HRC/23/46, at 6.

³⁰ E.g. at the time of writing, this report has just been released: UNHCR. The sea route to Europe: The Mediterranean passage in the age of refugees. 2015.

³¹ See T. Brian and F. Laczko, *Fatal Journeys: Tracking Lives Lost during Migration*, IOM.

³² T. Last and T. Spijkerboer. *Tracking Deaths in the Mediterranean*, 85–108 in *ibid.* Brian and Laczko, at 88.

³³ In *ibid.* Last and Spijkerboer, at 91.

³⁴ R. Harney, *The Commerce of Migration*, 9 *Canadian Ethnic Studies/Etudes Ethniques du Canada*, 42–53 (1977).

in the period up until the 1970s. John Salt built upon this in 2000 to present 'the Business of International Migration' as a global business of migration facilitation,³⁵ looking particularly at trafficking.³⁶ Later writers began increasingly to focus on migration control as well as facilitation, culminating in work like that of Thomas Gammeltoft-Hansen, who has systematically explored how this system of privatised engagement in migration governance adversely impacts upon international systems of asylum.³⁷

There are many reasons for European States to engage the private sector in these areas, including the potential for money-saving and tapping into private capacities that decreasingly exist in the public sector,³⁸ as well as what Georg Menz calls 'an ideological faith in the superiority of service provision by private actors in general'.³⁹ However, writers such as Menz, Lahav and others have long maintained that involving non-State actors substantially alters the way in which States are able to engage in migration control.⁴⁰ Georg Menz's extensive analysis of the use of the private sector in migration control in Europe leads him to conclude that:

... involvement of private-sector companies can also be seen as a way of extracting oneself from accountability and avoiding the often-unpleasant implementation of the most immediate and potentially aggressive forms of direct interaction with migrants.⁴¹

There is evidence to suggest that one possible reason for the increased privatisation of migration control is the opportunity that it offers to relocate problematic border practices away from States. Despite the issues raised in the academic literature on private actors in migration governance, the response in the policy community has been limited.

Private sector involvement in European migration control takes place in two main ways: (i) carrying out specific border-control activities; and (ii) involvement in migration-related policy development (including pre-entry, in-State and ejection

³⁵ J. Salt, *The Business of International Migration*, in MAB Siddique (ed) *International Migration Into the 21st Century*, 86–108 (Cheltenham: Edward Elgar, 2001).

³⁶ J. Salt and J. Stein, *Migration as a Business: The Case of Trafficking*, 35(4) *International Migration* 467–491 (1997).

³⁷ T. Gammeltoft-Hansen, *Access to Asylum* (Cambridge: Cambridge University Press, 2013).

³⁸ Cannon and Flynn note that private companies in the US were able to build the urgently needed detention centres much more quickly than the public authorities, M. Flynn and C. Cannon, *The Privatisation of Immigration Detention: Towards a Global View*, A Global Detention Project Working Paper, September 2009, at 15.

³⁹ G. Menz, *Neoliberalism, Privatisation and the Outsourcing of Migration Management: A Five Country Comparison*, 15(2) *Competition and Change* 116–135 (2011).

⁴⁰ See G. Lahav, *Migration and Security: The Role of Non-State Actors and Civil Liberties in Liberal Democracies*, United Nations, Population Division, New York: UN/POP/MIG/2003 89–106 (2003).

⁴¹ G. Menz, *The neoliberalized state and the growth of the migration industry*, in T. Gammeltoft-Hansen and N. Nyberg Sorensen (eds) *The Migration Industry and the Commercialization of International Migration*, 109–127 (Routledge, 2013), at 111.

measures). This paper looks at carrier sanctions, detention and deportation respectively. In terms of migration-related policy development, it has been argued that the private sector has helped to develop a culture of immigration policy tied up with security and fear.⁴² This is supported by the discussion below. The role of lobbies such as that of the detention sector in the US has long been publicly discussed, as is the fact that in the US private companies not only push for but sometimes even draft anti-immigrant law and policy.⁴³ This is not, however, a specifically American phenomenon and Clare Sambrook has written extensively on the role of corporations in this area in the UK, a country that has been particularly active from an early stage in privatising migration control activities.⁴⁴ Claire Rodier draws attention to the involvement of the British security firm G4S in the development of UK policy, attributing a series of government contracts for G4S to the belief that private involvement was:

The 'only solution', according to a study conducted by G4S, to enable the State to deal with constraints born of the budgetary restrictions without renouncing security imperatives.⁴⁵

Private sector proximity to policy-making not only leads to influence on specific policies, however. Several commentators have argued that it also enables the security sector to drive a greater focus on security and fear within European immigration discourse. This is emphasised by Rodier, who argues that increased European xenophobia currently suits private companies seeking to benefit from the heightened security consciousness it generates.⁴⁶

⁴² G. Lahav, *Migration and Security: The Role of Non-State Actors and Civil Liberties in Liberal Democracies*, United Nations, Population Division, New York: UN/POP/MIG/2003 89-106 (2003); UNRIC. Private companies prosper as migration control tightens. www.unric.org/en/latest-un-buzz/29093-private-companies-prosper-as-migration-control-tightens.

⁴³ Detention Watch Network, *The Influence of the Private Prison Industry in Immigration Detention*, 2009, www.detentionwatchnetwork.org/privateprisons; B. Hodai, *Private Prison Companies Behind the Scenes of Arizona's Immigration Law*, Prison Legal News 15th November 2010, <https://www.prisonlegalnews.org/news/2010/nov/15/private-prison-companies-behind-the-scenes-of-arizonas-immigration-law/> (accessed 5th May 2015).

⁴⁴ In particular, note the extensive work of Clare Sambrook in this area. Her website provides many links, for example, to the role of corporations in immigration detention and restraint in the UK: www.claresambrook.com.

⁴⁵ Original text: 'La "seule solution", selon une étude conduite par G4S, pour permettre à l'État de faire face aux contraintes nées des restrictions budgétaires sans renoncer aux impératifs de sécurité', in C. Rodier, *Xénophobie Business: A Quoi Servent Les Contrôles Migratoires?*, Paris: La Découverte (2012), at 24.

⁴⁶ Original text: '... l'amalgame pratiqué entre immigration et terrorisme n'est pas seulement un chiffon rouge agité par des politiciens en mal de légitimité. Il répond à des logiques économiques en favorisant la course aux technologies de pointe en matière d'identification et de fichage.', in *ibid.*, at 15-16.

Others agree.⁴⁷ For example, in a recent book, Susana Hidalgo argues that:

A discourse of fear is being sold [in Europe], by which public efforts are insufficient and so it is necessary to find private resources to fight against this perceived threat, the foreigner, who has come to invade us.⁴⁸

This is not a proof of intention but indicates the possibility of such policy influence. Indeed, for private security companies it is convenient if that threat be seen as a security problem, solvable by the solutions they offer. This has been used by some to explain the development, for example, of the use of immigration detention in Europe. That is, some argue that basing pay-offs on the numbers of beds filled influences private detention companies to support policies of increased detention once facilities are built.⁴⁹

The intention here is not to shift responsibility from States to the private sector. There are plenty of examples of problematic migration control practices carried out by State agents and xenophobic and securitised discourses on migration cannot be blamed only on the private migration industry. This paper instead emphasises that private sector actors in fact have involvement both in specific migration control activities and in developing policy and that the expected primary interests of such actors is economic rather than humanitarian. Moreover, it notes that there is concern that this delegation makes it more difficult to enforce standards. Examples include recent cases where migrant deaths have been investigated, such as after the 2014 riot at Manus Island detention centre run by G4S on behalf of Australia,⁵⁰ and the 2010 suffocation during deportation from the UK of a migrant from Angola by G4S security guards.⁵¹ In such cases, some suggest that it has been more difficult to punish those involved because these traditionally State-managed activities have been contracted out. Not least, in several such cases, States have been able to change contracts rather than engaging directly with problems that arise⁵² (indeed, sometimes the texting of

⁴⁷ A. Leander, *Regulating the Role of PMCs in Shaping Security and Politics*, in S. Chesterman and C. Lehnardt (eds) *From Mercenaries to Markets: The Rise and Regulation of Private Military Companies* (Oxford: Oxford University Press, 2007).

⁴⁸ Original text: 'Se vende el discurso del miedo, de que no son suficientes las fuerzas públicas y de que hay que buscar recursos privados para luchar contra ese supuesto enemigo, el extranjero, que ha venido a invadirnos', S. Hidalgo, *El Último Holocausto Europeo*, Akal (2014), extract found at www.lamarea.com/2015/02/03/el-negocio-de-la-europa-fortaleza/ (accessed 4th May 2015).

⁴⁹ M. Flynn and C. Cannon, *The Privatisation of Immigration Detention: Towards a Global View*, A Global Detention Project Working Paper, September 2009, at 4.

⁵⁰ *The Australian*. Two arrested over Manus Island riot death of Reza Barati, *The Australian* August 19 2014. www.theaustralian.com.au/national-affairs/immigration/two-arrested-over-manus-island-riot-death-of-reza-barati/story-fn9hm1gu-1227029599261.

⁵¹ M. Taylor and R. Booth, G4S guards found not guilty of manslaughter of Jimmy Mubenga, in *The Guardian*, Tuesday 16 December 2014. www.theguardian.com/uk-news/2014/dec/16/g4s-guards-found-not-guilty-manslaughter-jimmy-mubenga.

⁵² C. Kirkham, *How Corporations Are Cashing In On The Worldwide Immigration Crackdown*, *Huffington Post* 01/23/2014, www.huffingtonpost.com/2014/01/23/private-prisons-immigration_

corporations means that a change in contracts may in effect be no change at all). Interestingly, when asked about why she thought the Australian government had turned in 2014 to the services of G4S, a corporation already with a tarnished record in Australian immigration detention, a campaign manager for one human rights group noted: 'there's also very few firms that would put their hands up for such a hideous job'.⁵³ This perhaps suggests a belief that some firms are deterred from such contracts by some sort of CSR, though whether from a business, ethical or legal case is unclear from the statement.

It is interesting to consider briefly the example of Greece. Long criticised for the conditions in its publicly-run immigration centres,⁵⁴ it has been suggested that new legislation in 2012 allowed authorities 'to transfer the responsibility of guarding the centres from the Greek police directly to private security firms'.⁵⁵ According to one online journal, the funding for this will come from the Public Investment Programme and the EC Return fund.⁵⁶ In Spring 2014, various companies already well-established in the immigration detention sector in Europe were bidding for the contracts, with one report suggesting over half a dozen bids from companies including G4S, Mega Sprint Guard, JCB Security and Facility, and Swedish Systems Security.⁵⁷ Bidding is reported to have closed in January 2015. It will be useful to trace how this develops, especially in light of the 2015 election of the Syriza party in the country and increased migration. While the involvement of the private sector in these ways provides States with new mechanisms of migration control,⁵⁸ it also relocates some State authority in ways that may be difficult to undo. That is, it creates 'path-dependent lock-in effects ... that shape – though not determine – subsequent developments'.⁵⁹ This paper wonders whether there may sometimes be CSR reasons for corporations to turn this around.

n_4603448.html.; UNRIC. Private companies prosper as migration control tightens. www.unric.org/en/latest-un-buzz/29093-private-companies-prosper-as-migration-control-tightens.

⁵³ Quoted in C. Kirkham, How Corporations Are Cashing In On The Worldwide Immigration Crackdown, *Huffington Post* 01/23/2014, www.huffingtonpost.com/2014/01/23/private-prisons-immigration_n_4603448.html.

⁵⁴ See, for example, these recent cases: ECtHR – Mohamad v Greece (no. 70586/11) 11 December 2014; ECtHR – AL.K. v Greece (no. 63542/11) 11 December 2014.

⁵⁵ Quoted on the website of the Global Detention Project, www.globaldetentionproject.org/countries/europe/greece/introduction.html (accessed 4th May 2015).

⁵⁶ X-pressed, Greece: The Detention Centres for Migrants are given to private security companies, in *x-pressed, an open journal*, January 7th, 2014. www.x-pressed.org/?xpd_article=the-detention-centres-for-migrants-are-given-to-private-security-companies.

⁵⁷ EU Observer, <https://euobserver.com/justice/123711> (accessed 4th May 2015).

⁵⁸ *Ibid.* G. Menz (2011); V. Guiraudon and G. Lahav, A Reappraisal of the State and Sovereignty Debate: The Case of Migration Control, 33 *Comparative Political Studies* 163.195 (2000).

⁵⁹ *Ibid.* (Menz; 2011).

Two aspects make Europe a particularly interesting region to consider. First, some argue that a particularly European approach to CSR has developed,⁶⁰ while second, Europe has also been a focal point for privatisation in the migration sector.⁶¹ This established tradition in both CSR and privatised migration control, alongside the European CSR emphasis on practice, makes Europe an interesting context in which to consider CSR in migration control, or alternatively to conclude that CSR is inappropriate in this sector. The rest of this paper explores how an analysis of migration as a vital good could ground CSR in this area.

4. DEPORTATIONS AND CSR

To effect a 'deportation' or 'expulsion' or 'removal', a State may pay a passenger transport company to remove a person from its territory. In Europe, this is usually done when someone is considered to be in the territory irregularly or to pose a threat to the State in question. In recent years concern has been expressed, for example, at the deportation of persons with rejected asylum claims to countries known to have ongoing conflict or where people may be at risk for other reasons. Deportation is controversial in itself, and one prominent migration theorist recently presented it as a form of 'forced migration',⁶² while others query the right of a State to exclude in the first place.⁶³ The focus here is narrower, however, looking only at impeding asylum. Consider first situations in which the private actors involved believe that a particular deportation may represent a case of *refoulement*. In some such cases, contracted private actors have forced the suspension of deportations. This looks like an informal recognition of, and action upon, social responsibility (whether driven by staff or customer concern and whether for business or other reasons). Most of Europe's major airlines are used for deportations, and so the discussion of Air France KLM here stands in for a larger array of situations in which deportation has been contested and prevented by private-sector or individual actors.

French and UK use of Air France in deportations has been the subject of international discussion and in 2007, Air France employees encouraged shareholders in the company to vote against the use of Air France in deportations. The corporation's president, Jean-Cyril Spinetta, is quoted as saying at the time that 'when the Republic

⁶⁰ R. Mulleral, Corporate Social Responsibility: A European Perspective, 13(6) The Jean Monnet / Robert Schuman Paper Series.

⁶¹ For example, the first immigration detention centres which opened in the UK, in the 1970s, were already run by the private sector, www.globaldetentionproject.org/countries/europe/united-kingdom/introduction.html (accessed 4 May 2015).

⁶² M. Gibney, Is Deportation a Form of Forced migration? 32(2) Refugee Survey Quarterly 116–129 (2013).

⁶³ For example, B. Schotel, On the Right of Exclusion: Law, Ethics and Immigration Policy (Abingdon: Routledge 2012).

asks for our assistance to implement decisions taken in the context of incontestable legitimacy, I don't see any reason to refuse ...', but 'if the shareholders intervene, that could have an impact'.⁶⁴ The union representatives of the employees mentioned staff concerns about safety when transporting people in this way.⁶⁵ In the same year as the Air France action, the British carrier XL Airways declared that it would no longer carry failed asylum-seeking deportees, explaining that it had 'sympathy for all dispossessed people in the world'.⁶⁶ Individual Air France pilots have continued to refuse to fly in certain circumstances, for example blocking deportations of Cameroonians whose asylum claims based on sexual orientation had been rejected in the UK.⁶⁷ Pilots of other airlines have also refused to fly deportees, some cases of which have been more widely publicised than others.⁶⁸

In the context of the business case for CSR, the statements of Jean-Cyril Spinetta (above) and of Philippe Decrulle (below) in the context of Air France are interesting. Decrulle stated that '[t]he expulsions are very bad for the image of the Air France brand, particularly in Africa'.⁶⁹ Air France has wide business interests in Francophone Africa and the suggestion was that deportations damaged the company name in this region. The transportation of paying customers is a key aspect of the work of the major

⁶⁴ Original text: 'lorsque la République nous demande notre concours pour exécuter les décisions prises dans le cadre d'un légalité incontestable, je ne vois pas au nom de quel motif on le refuserait'... Mais ... 'si les actionnaires l'interpellent, ça peut avoir une incidence', in *La Tribune*, Air France: les salariés interpellent les actionnaires pour stopper les expulsions d'étrangers, *La Tribune* 10/07/2007, www.latribune.fr/archives/2007/ID6DFC3D93AD5C4BBEC125731500282906/air-france-les-salaries-interpellent-les-actionnaires-pour-stopper-les-expulsions-detranagers.html.

⁶⁵ BBC News Website. Plea to Air France over deportees, BBC News, Thursday 12 July 2007, <http://news.bbc.co.uk/1/hi/world/europe/6896137.stm>; A. Chrisafis, The crackdown, *The Guardian*, Wednesday 3 October 2007, www.theguardian.com/world/2007/oct/03/france.angeliquechrisafis.

⁶⁶ Quoted in R. Verkaik, 'Major airline refuses to help with forcible removal of immigrants', *The Independent* 8 October 2007, www.independent.co.uk/news/uk/crime/major-airline-refuses-to-help-with-forcible-removal-of-immigrants-394451.html (accessed 4 May 2015).

⁶⁷ For example, an Air France pilot refused to deport Ediage Valerie Ekwedde, who had been flown from London to Paris for a connecting flight to Cameroon. The UK Border Agency refused asylum as there was 'no credible evidence' he was gay. See 'Gay' man's deportation from UK to Cameroon halted', BBC news website 5 May 2012, www.bbc.com/news/uk-17971083 (accessed 4 May 2015).

⁶⁸ The deportation of student Yashika Bageerathi from the UK gained much media coverage and Air Mauritius initially did not carry her, though she was later deported by the company. See, for example, the contemporary feed from *The Guardian*, 'Deportation of Yashmak Bageerathi: why did the airline have to do it?', www.theguardian.com/news/reality-check/2014/apr/03/deportation-yashika-bageerathi- (accessed 4 May 2015). The airline later released a statement which is discussed by I. Dunt, 'Air Mauritius in the dock: There was no directive to deport Yashika', 3 April 2014, www.politics.co.uk/blogs/2014/04/03/air-mauritius-in-the-dock-there-was-no-directive-to-deport-y (accessed 4 May 2015).

⁶⁹ Original text: 'Les expulsions sont très mauvaises pour l'image de marque d'Air France, notamment en Afrique', quoted in *La Tribune*. Air France: les salariés interpellent les actionnaires pour stopper les expulsions d'étrangers, *La Tribune*, 10 July 2007, www.latribune.fr/archives/2007/ID6DFC3D93AD5C4BBEC125731500282906/air-france-les-salaries-interpellent-les-actionnaires-pour-stopper-les-expulsions-detranagers.html (accessed 4 May 2015).

commercial airlines used for deportation (though there are also smaller companies for which deportation may represent a larger proportion of revenue⁷⁰), and there are discrete incidents of customer pressure halting⁷¹ or trying to halt⁷² deportation procedures. Perhaps if this role becomes better known, the CSR business case against engaging in some deportations may strengthen.

When *The Independent* newspaper contacted UK company British Airways in 2007 for a comment about private airline participation in the deportation of individuals from the UK, the airline stated: 'It is UK law and we comply with it – it's like asking whether we are happy paying income tax'.⁷³ The fact that this spokesperson considered it important to reinforce the imposition from States makes this a particularly interesting statement because airlines are in fact paid for deportations and can theoretically opt out from them – two factors which are not usually considered to be the case with income tax. This might indicate not just that the airline might be willing to cease its participation in deportations, but also that it, like Air France, recognises the public image problems potentially arising from such activities, something also recognised by commentators.⁷⁴ Irrespective of whether or not some deportations may be appropriate, it seems that passenger airline staff and customers and even spokespersons recognise that there may be CSR-like reasons for private passenger transport companies not to be involved in deportation, at least in certain circumstances.

5. CARRIER SANCTIONS AND CSR

Carrier sanctions refer to fines and other penalties placed on passenger transport companies for carrying persons without the documentation required for entering the receiving State. Such sanctions have been in place for a long time, but the current instantiation in Europe can be traced to the 1980s and 1990s, starting in 1987 with Belgium, Denmark, West Germany and the UK, and followed in the 1990s by Austria

⁷⁰ One such company for whom deportation represents an important part of business is the Romanian company Tarom, which has played a central role in Germany's deportation regime.

⁷¹ In 2014, for example, passengers refused to fasten their seatbelts on a plane, rendering it unable to leave Östersund in Sweden before removing Ghader Ghalamere, who was being returned to Iran via Stockholm. See A. Withnall, 'Refugee facing deportation from Sweden saved by fellow passengers refusing to let plane leave', *The Independent*, 14 April 2014, www.independent.co.uk/news/world/europe/refugee-facing-deportation-from-sweden-saved-by-fellow-passengers-refusing-to-let-plane-leave-9259085.html (accessed 4 May 2015).

⁷² When, in March 2008, customers on a British Airways flight grouped together against the deportation of a Nigerian refugee, the police evacuated all of Economy Class (136 passengers) and the deportation went ahead.

⁷³ Quoted in *ibid.* Verkaik (2007).

⁷⁴ *Ibid.* Menz (2011).

(1991), France (1992) and the Netherlands (1994).⁷⁵ And indeed, for example, European Council Directive 2001/51/EC required European Member States to adopt carrier sanctions.⁷⁶ This is different in form from detention. Rather than a direct contract, States push corporations to act in certain ways under threat of sanction. An obligation to carry individuals in some instances, then, looks more like some form of disobedience, whether civil or corporation-civil. However, there is also a useful discourse on vital goods that is clearer here but applicable across the examples presented.

Throughout their history, carrier sanctions have been contested. Three worries are particularly relevant to the current discussion.⁷⁷ First, there is concern at the undue impact that they have on the possibility of movement for those seeking asylum, who, in virtue of the urgent conditions of their movement, often must do so irregularly. A second criticism is associated with putting low paid and untrained staff of private transport companies in the position of having to take such decisions. This puts pressure on individual agents to make the decision whether or not to take the economic risk on a humanitarian case. That is:

While carriers are threatened if they err and allow entry to undocumented migrants, they are not subject to any sanctions if they effectively deny entry and admission of asylum seekers. There are thus incentives to err on the side of caution which in this case means to refuse to transport asylum seekers who wish to enter clandestinely.⁷⁸

This makes it seem more economically sensible, when in doubt, to refuse someone travel, rather than to take the risk that they might be rejected by the State. A third, related, concern with carrier sanctions is that it is hard to know *how many* persons trying to flee intolerable situations are prevented, in this way, from travelling.

The criticisms have led to some changes. For example, in 2004 the EU created a network of Immigration Liaison Officers (ILOs),⁷⁹ officials from Member States, building upon the initiatives of some individual Member States (though there are mixed opinions regarding the success of their role). In some European countries, carrier sanctions are also waived if the person is subsequently granted asylum, or even if the person only applies for asylum, irrespective of the outcome. However, the use of such sanctions still launders policy goals that would otherwise require illegal returns. By stopping people arriving, States 'no longer need to expel failed asylum claimants – with the risk of violating the prohibition against *refoulement* – they simply make

⁷⁵ *Ibid.* Mens (2011).

⁷⁶ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001L0051>.

⁷⁷ This is developed particularly in *ibid.* Bloom and Risse.

⁷⁸ T. Kritzman-Amir, Privatization and Delegation of State Authority in Asylum Systems, 5 Law and Ethics of Human Rights 193–215 (2011), at 203.

⁷⁹ See, for example, E. Guild, The Right to Leave a Country, Commissioner for Human Rights Issue Paper, Strasbourg: Council of Europe (2013), at 56–57.

sure they cannot reach the border'.⁸⁰ To do this, States need the complicity of private passenger carriers. This mode of delegation also has the effect of obscuring the intentions and effects of policy, since there is a built-in incentive for companies to set higher barriers to entry than States do in order to reduce further the risk of sanction, and there is no framework for examining who is thereby excluded from travel.⁸¹ Moreover, as has been demonstrated from the discussion of deportation above, there is evidence that those working for and using the passenger transport industry themselves are concerned about activities that hamper asylum.

6. ACCESS TO PASSENGER TRANSPORT AND THE MEANS TO MIGRATE AS NECESSARY FOR LIFE

The CSR considerations in the utilities sector, relating to the supply of a good that is necessary for life, is useful here. For some commentators, the obligation to ensure access to sufficient affordable water⁸² goes beyond CSR towards the emergence of an international corporate human rights responsibility which is considered distinct from and stronger than CSR.⁸³ Indeed, it is the context of the discussion of water that led UN SRSG John Ruggie to conclude already in 2006 that:

There are legitimate arguments in support of the proposition that it may be desirable in some circumstances for corporations to become direct bearers of international human rights obligations.

The intention here is not to enter into the discussion of CSR frameworks over potentially less voluntary frameworks. Instead, it is to note that some hold that the recognition of water as a vital resource has led to the recognition of a responsibility of corporations in this area. This has affected how water suppliers act in some ways, including in their interaction with States. And in this light, General Comment No. 15 on the right to water of the UN Committee on Economic, Social and Cultural Rights⁸⁴ explicitly speaks against disconnection of water supply when this leaves persons without reliable

⁸⁰ S. Scholten and P. Minderhoud, *Regulating Immigration Control: Carrier Sanctions in the Netherlands*, 10 *European Journal of Migration and Law* 123–147 (2008), at 129.

⁸¹ For more extended discussion on the problem of this 'hidden coercion', see T. Bloom and V. Risse, *Examining hidden coercion at state borders: why carrier sanctions cannot be justified*, 7(2) *Ethics & Global Politics* 65–82 (2014).

⁸² J. Letnar Cernic, *Corporate Obligations Under the Human Right to Water*, 39(2) *Denver journal of International Law & Policy* 303–345 (2011), at 336–342.

⁸³ G. Aguilar Cavallo, *The Human Right to Water and Sanitation: Going Beyond Corporate Social Responsibility*, 29(76) *Merkourios: Utrecht Journal of International and European Law* 39–64 (2013).

⁸⁴ UN Committee on ESCR, *General Comment No. 15 on the right to water* (2002), at para 3.

safe drinking water. This reference to suspension or interruption of services is important here.

While water is always a vital resource, electricity is only vital according to context. In situations where electricity is a vital resource, it has also been argued that there is an obligation not to remove or reduce the supply below a level needed for life. Dana Weiss and Ronan Shamir suggest that a notion of CSR with regard to the supply of goods that are needed for life might override demands made by States to interrupt supply even in situations where sovereignty or national security may be given as the reason for interrupting that supply.⁸⁵ In the case that Weiss and Shamir present, a country, Israel, asked a company, Dor Alon, to restrict electricity supply to the Gaza Strip as part of a series of State sanctions. Although initially hesitant, Dor Alon complied. Rights groups claimed that this caused fatal hardships among customers in that region, who were unable to power vital services. As in the European case of passenger transport, what was being supplied here was not controversial or problematic in itself and is only contingently needed for life. For Weiss and Shamir, the main problematic factor in their case was the location where the business was operating.⁸⁶ However, there also seems to be a two-fold parallel with passenger transportation, bringing out matters to which Weiss and Shamir also draw attention:

- (1) Persons suffer urgent human rights-related effects when there is a drop in supply; and
- (2) A State has asked the private company to limit that supply in a way that may be financially detrimental for the corporation.

Drawing on this, Weiss and Shamir present the need for an alternative approach to CSR. They conclude that:

... in certain circumstances corporations should be obligated to supply goods and services, at least when the affected population has not recourse to alternative venues by which to obtain such services or commercial goods.⁸⁷

Apart from possible legal or economic reasons for this, there are a number of ethical considerations. For a start, the corporation is in a position to provide the good, and this in itself gives rise to the obligation to do so. Another approach is to note that a business built on the supply of a utility for which there are few suppliers benefits from the fact that the customers are vitally dependent upon the firm. This brings with it the obligation not to remove the supply, though there is not space to develop this more here. There is also no space here to examine sovereignty implications of suggesting that corporations have obligations to impede such actions of States for reasons of CSR. Some useful texts

⁸⁵ D. Weiss and R. Shamir, *Corporate Accountability to Human Rights: The Case of the Gaza Strip*, 24 *Harvard Human Rights Journal* 155–183 (2011).

⁸⁶ *Ibid.*, at 158.

⁸⁷ *Ibid.*, at 176.

in the literature offering discussion of the impact on democratic governance and some aspects of sovereignty are worth considering.⁸⁸

While passenger transport companies acting in the ways described may apparently violate the prohibition on preventing someone from leaving a country or returning a person to a place of persecution or torture, these are not usually seen as obligations on private non-State actors and indeed these provisions are constructed within the asylum regime as limits on States. The notion of an obligation not to interrupt the supply of goods needed for basic life offers another way to look at the matter. However, as the need for access to passenger transport is contingent, some measure is needed for identifying whether persons suffer from a lack of it.

As an initial and tentative suggestion, there are two dimensions of note. First, often when large numbers of people are moving, they leave behind places where the quality of life or life expectancy is low. This is parallel to the claims made in the Weiss and Shamir case above that, as people were struggling as a result of insufficient electricity to power (e.g. impairing hospital services), electricity was rendered a vital good. Second, the fact that such large numbers of people are willing to forego or risk foregoing other basic goods in order to move indicates the level of importance that they place upon access to passenger transport. Persons in fact knowingly make use of modes of transport that are extremely dangerous in order to travel, paying high sums to travel in what they know to be unseaworthy boats in the Mediterranean, for example. This is parallel to the willingness of persons without access to clean water to drink water they know to be contaminated. Combining these two dimensions could help to compensate for other, non-vital, motives, such as thrill-seeking or ignorance in such choices.

Much of the European response to the current tragedies in the Mediterranean has been to criticise trafficking and to redouble efforts to stop it (time of writing: May 2015). However, the existence of smuggling and trafficking, and so the fact that there are people willing to pay to risk in this way, demonstrates how basic is the need to move.⁸⁹ The current public calls by European leaders for new efforts to ensure that smugglers and traffickers do not make money from the desperation of people to move could model a call for other actors in the wider migration industry not to remove that vital need to move when a person's life is in danger.

In the Guiding Principles, a CSR to respect human rights is explained. There are two aspects that are of particular interest here: Articles 11 and 23. Article 11 states that:

Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

⁸⁸ For example, G. Lahav. From Migration Control to Disciplining Mobility: New Actors, New Challenges, part of: 'The Lampedusa Dilemma: Global Flows and Closed Borders. What Should Europe do?', EUI Florence, 17–18 November 2014; *ibid.* Lava 2003.

⁸⁹ For a concise and clear exposition of this, see M. Jill Alpes and N. Nyberg Sorensen, Migration Risk Campaigns are Based On Wrong Assumptions. DIIS Policy Brief May 2015.

And Article 23 states that:

In all contexts, business enterprises should

- (a) Comply with all applicable laws and respect internationally recognised human rights, wherever they operate;
- (b) Seek ways to honour the principles of internationally recognised human rights when faced with conflicting requirements;
- (c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

There may, then, be a CSR obligation not to suspend the service of a vital good. If so, then in cases where the sole reason that a private company does not carry an individual in urgent need of travelling (and when carrying the person would otherwise represent the normal revenue-generating activity of the company) is to avoid risking State sanction, this seems to represent a rights violation on the part of *the State*. While the standing of the action of the corporation is more difficult to pin down, it looks like there may be either a failure of the corporation to 'honour the principles' of human rights or merely a failure to speak out against that State's behaviour. Similar discussions can be extended to deportation and detention and the role of private companies impeding asylum-seeking in other ways.

7. CONCLUSION

The substantial and growing migration control sector presented in this paper is one that has received little attention from the CSR community, but one which presents an interesting challenge to existing frameworks in Europe and beyond. This paper argues that existing European discussion of CSR fails to address situations in which European States may mediate the violation of international and European norms through delegation to the private sector. It proposes that an analysis of the migration industry helps to highlight this, and the CSR discourse may offer a way to articulate corporate responsibility in cases of privatised migration control. The imperative not to interrupt the supply of, in particular, a basic vital good puts obligations on corporations. This may be so when a State asks a firm to do things that are in breach of international norms – and even, as in the case described by Weiss and Shamir, when this is framed as a matter of sovereignty. Both of these considerations are pertinent to the migration case, which involves activities that are problematic from a humanitarian perspective, but which tend to be justified from the perspective of the special nature of States and their right to protect their composition and the security of their citizenries.

This paper has put forward two potentially conflicting notions. First, it has suggested that private involvement in the migration sector has contributed to a

securitised discourse which has made problematic activities appear less troubling. It has suggested that there are particular qualities of a privatised migration control sector which make it harder, currently, to enforce human rights and State obligations. This could imply that involving private actors in this way should be avoided. Indeed, elsewhere I have argued as much.⁹⁰ Second, this paper has suggested that there may be some corporate responsibility in this sector, even in the face of security claims. Despite first appearances, these two are not irreconcilable. Privatisation in this sector is a fact and the altered nature of the sector is also a fact. This means that the outdated framework where States are the primary actors in migration governance cannot hope to resolve the concerns that have arisen. This paper suggests one direction towards an alternative approach.

A four-dimensional notion of CSR was presented in the introduction, such that CSR is understood to imply that corporations have a responsibility to be profitable, legal, ethical and philanthropic. This paper has indicated that there may be a CSR for companies in some cases not to carry out the wishes of European States in the migration context according to the first three of these dimensions. *First, be profitable.* This paper has suggested that there is a business case for CSR in this area. This has already been mentioned by unions and pressure groups. The companies involved have large multinational business engagements outside the migration sector, including with clients that may not want association with European migration control activities, especially as they come under increasing criticism from international organisations. Perhaps this will become more pronounced as the migration industry becomes better understood. *Second, be legal.* While the obligations associated with the rights to seek asylum and against *refoulement* are more usually attributed to States, the requirement to respect what could be seen as human rights already comes through the Guiding Principles and the Compact. Moreover, playing by the rules presumably excludes acting in such a way as to enable another actor to renege on an obligation. *Third, be ethical.* Access to passenger transport has been shown here to be a vital good, the withholding of which can be fatal or lead to unnecessary suffering. Similar arguments could be made with respect to some cases of deportation and arbitrary detention.

The European Union and its Member States have come under criticism in recent years for their migration management regimes. The situation can seem intractable. Elected officials may be fearful of losing the votes of electorates influenced by xenophobic considerations within a context of economic hardship. Meanwhile, individual States may be reluctant to take humanitarian steps without the assurance that others will also do so. The potential role of the private sector in responding to this situation has been largely ignored, but perhaps the language of CSR could offer a way of talking for a European system caught in a vicious cycle of securitisation and

⁹⁰ T. Bloom. The business of noncitizenship, 19(8) Citizenship Studies (2015) 892–906. T. Bloom, The Business of Migration Control: Delegating Migration Control Functions to Private Actors, 6(2) Global Policy (2015) 151–157.

heightened controls. The migration case presented here offers a genuine challenge and an opportunity for innovation. CSR has been criticised as a way to launder the dirty hands of company executives. This paper has tentatively looked at an alternative use of CSR, in situations where the involvement of private corporations might launder problematic State activities.